



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,815	07/16/2003	Christopher E. Combest	32323-CNT1	1234

7590 04/22/2004

THOMAS B. LUEBBERING  
HOVEY, WILLIAMS, TIMMONS & COLLINS  
Suite 400  
2405 Grand  
Kansas City, MO 64108

EXAMINER

COLON SANTANA, EDUARDO

ART UNIT	PAPER NUMBER
----------	--------------

2837

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/620,815	Applicant(s) COMBEST, CHRISTOPHER E.	
	Examiner Eduardo Colon-Santana	Art Unit 2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

Art Unit: 2837

## DETAILED ACTION

*Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,609,589. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter in the instant application is covered by the patent since the patent and the application are claiming common subject matter regarding a speaker enclosure having a speaker box, a faceplate, a compressible gasket and a coupling mechanism.

As to claims 1, 5 and 11 as presented in the instant application, it describes the use of a compressible gasket interposed between a speaker box and a faceplate, including a

Art Unit: 2837

coupling mechanism adapted to resist over-compression of the compressible gasket to maintain a substantially uniform degree of separation. However, claims 1-3 and 8 from US Patent '589 disclose a faceplate attachable to the speaker box having a compressible gasket affixed to a perimeter of the opening, wherein a coupling mechanism is adapted to resist over-compression of the compressible gasket wherein the degree of separation is between 1/64 inch and 3/64 inch. The difference between the instant application and Patent '589 would have been obvious, since one ordinary skill would have considered any substantially degree of separation, this modification would have involve a mere change in the degree of separation. Additionally, a substantially uniform degree of separation is deem a matter of design choice involving differences in degree and not having patentable distinctions which would generally be recognized as being within the level of one ordinary skill in the art. See *In re Rose*, 105 USPQ 237 (CCPA 1955).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2837

1. Claims 1, 4, 5, 8, 10, 11, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richie U.S. Patent No. 4,296,280 in view of Meyerle U.S. Patent No. 4,251,045.

Referring to claim 1, Richie discloses a wall mounted speaker system as claimed (see figure 1 and respective portions of the specification). Richie further discloses a speaker enclosure (#3) having a speaker box (#4), a gasket (#21) and a faceplate (#6). However, Richie does not explicitly describe having the speaker box attached by a coupling mechanism using a threaded body and a spring. Meyerle discloses a method and apparatus for reducing undesired transmission of acoustic energy from a loudspeaker cabinet (see figure 4 and 5). Meyerle additionally discloses using springs #58 attached with a screw #62 having the same predetermine taper and spring constant (see Col. 4, lines 41-47). It would have been obvious to one of ordinary skill in the art at the time of the invention to use a spring as a coupling mechanism on a speaker enclosure as taught by Meyerle within the teaching of Richie for the purpose/advantages of reducing distortion and transmission of speaker vibrations as well as preventing damage in the event of an undesirable contact in Richie.

Referring to claim 4, 8 and 14, Richie discloses the speaker box being mountable to a stud (#19 and #20) within the wall (see figure 1).

As to claims 10 and 16, Meyerle discloses a type of spacer (#66), which helps maintain the spring in position (see figure #5).

2. Claims 2, 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richie and Meyerle U.S. Patent No. 4,251,045 as applied to claims 1, 5 and 11 above, and further in view of Conger et al. U.S. Patent No. 5,261,721.

Referring to claims 2, 6 and 12, Richie and Meyerle addresses the limitations as explain above, but do not explicitly describe a gasket having a tubular section defining a collapsible air pocket. However, Conger et al. discloses a vehicle window assembly with a weather seal system in which he describes the use of a bulb seal gasket (#258) having a collapsible air pocket (see figure 11). Furthermore, Conger states that the use of this bulb seal gasket is not merely for weather purpose, but also for a noise seal (see Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to use a gasket having a tubular section defining an air pocket as describe by Conger in the combination of Richie and Meyerle for the purpose/advantages of ensuring optimum isolation of the parts in a speaker enclosure arrangement and to insulate the parts from noise and vibrations.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eduardo Colon-Santana whose telephone number is (571) 272-2060. The examiner can normally be reached on Monday thru Thursday 7:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor can be reached on (571) 272-2800 X.37. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ECS  
April 19, 2004



**DAVID MARTIN**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2800**